

Attorney Docket No.: DC-0155  
Inventors: Brinckerhoff and Rutter  
Serial No.: 09/856,749  
Filing Date: August 12, 2002  
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#### **REMARKS**

Claims 1-5 are pending in this application. No new matter has been added. Applicant is respectfully requesting reconsideration of the restriction requirement in view of the following remarks.

The claims of the present application have been subjected to a Restriction Requirement under 35 U.S.C. §121 and 372 by the Examiner in this case. The Examiner suggests that restriction of the present invention into the following groups is required:

Group I, claims 1-2, drawn to a method of detecting the matrix metalloproteinase-1 Ets transcription factor binding site single nucleotide polymorphism;

Group II, claim 3, drawn to a kit comprising a means for detecting matrix metalloproteinase-1 Ets transcription factor binding site single nucleotide polymorphism;

Group III, claim 4, drawn to a method of identifying potential therapeutic agents for treatment by determining an agent's ability to inhibit binding of matrix metalloproteinase-1 Ets transcription factor binding site single nucleotide polymorphism; and

Group IV, claim 5, drawn to a method of treating patients with an agent which inhibits binding of a transcription factor.

The Examiner suggests that the inventions listed as Groups I-IV do not relate to a single general inventive concept under PCT Rule 13.1 because they lack the same or corresponding special technical features. The Examiner suggests that the inventions appear to be linked by the matrix metalloproteinase-1 Ets transcription factor binding site single nucleotide polymorphism and the full length gene, a sequencer, a hexamer mix, and a label

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would be a means for detecting the polymorphism in a patient; however, this means would not be a special technical feature which links each of the groups. Applicants are required to elect one of the Groups to be examined. Applicants respectfully disagree and traverse this restriction requirement.

MPEP §803 is quite clear; for a proper restriction requirement, it must be shown (1) that the inventions are independent or distinct AND (2) that there would be a serious burden on the Examiner if the restriction is not required. MPEP 802.01 defines "distinct" to mean that the "two or more subjects as disclosed are related, for example, as combination and part (subcombination) thereof, process and apparatus for its practice, process and product made there, etc., but are capable of separate manufacture, use, or sale, as claimed, AND ARE PATENTABLE (novel and unobvious) OVER EACH OTHER."

As acknowledged by the Examiner, claims set forth in the instant application relate to matrix metalloproteinase-1 Ets transcription factor binding site single nucleotide polymorphism. Therefore, a search of the relevant prior art regarding this polymorphism would reveal art related to means for detecting the polymorphism and methods for using this information in diagnostic, prognostic, and treatment. Therefore, no additional burden would be incurred by the inclusion of all three groups of claims in this application. However, should the Examiner maintain the restriction, Applicant respectfully requests reconsideration of the restriction of claims 1-3 into Groups I and II for the following reasons. Art relating to methods for detecting the matrix metalloprotenase-1 containing the Ets transcription factor binding site single nucleotide polymorphism in a patient

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sample would inherently contain a use for detecting such a polymorphism, e.g., diagnosing and prognosticating MMP-1 related diseases. Likewise, art relating to diagnosing or prognosticating MMP-1 related disease would inherently contain reference to methods for detecting matrix metalloproteinase-1 containing the Ets transcription factor binding site single nucleotide polymorphism. Thus, Applicant respectfully requests that claims 1-3 be searched and examined together. Accordingly, reconsideration and withdrawal of the restriction requirement is respectfully requested.

However, in an earnest effort to be completely responsive, Applicant hereby elects to prosecute Group I, claims 1-2, drawn to a method of detecting the matrix metalloproteinase-1 Ets transcription factor binding site single nucleotide polymorphism, with traverse.

Respectfully submitted,



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